

JAMES W. HOOP  
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U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
CINCINNATI

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT CINCINNATI

Mark R. Hoop, et al., )  
Plaintiffs, ) Civil Action No. C-1-00-869  
v. )  
Jeffrey W. Hoop, et al., ) District Judge Susan J. Dlott  
Defendants. )

**PLAINTIFFS' OBJECTION TO DEFENDANTS' EXHIBIT DX4**

Defendants have identified as an exhibit they propose to introduce in this case Defendants' exhibit DX4, which is listed in the Final Pretrial Order under Defendants' Exhibits. That exhibit includes bills for Defendants' attorney fees and specifies the following:

Bills for legal services rendered for the Hoop Brothers, including legal fees and expenses incurred in legal proceedings before the PTO, this Court, and the U.S. Court of Appeals for the Federal Circuit.

Because the matter of an award of attorney fees is one for the Court, not for the jury, Defendants should be barred from attempting to introduce DX4 at the trial of this case. In that regard, the governing statute is 35 U.S.C. § 285, which provides "The court in exceptional cases may award Attorney fees to the prevailing party." Thus, only the Court is vested with the authority to award attorney fees. Additionally, there are two conditions that must be satisfied before consideration can be given to an award of attorney fees – first, that the party requesting fees be the prevailing party, and second, that the Court find the case to be an exceptional case. Only after those conditions have been found to exist, can an award be considered. And an award is not mandated but is within the Court's sound discretion based upon all the circumstances.

Neither of those conditions falls within the jury's province for determination. In that regard, the Court can consider the propriety of an award of attorneys fees in a post-trial fees motion.

Accordingly, Defendants' exhibit DX4 should be excluded from presentation at the trial.

Respectfully submitted,



Alfred J. Mangels (0015981)  
4729 Cornell Road  
Cincinnati, Ohio 45241  
Tel.: (513) 469-0470  
Trial Attorney for Plaintiffs

Of Counsel:  
Timothy A. Magee, Esq.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the foregoing PLAINTIFFS' OBJECTION TO DEFENDANTS' EXHIBIT DX4 was served upon counsel for Defendants this 28<sup>th</sup> day of January 2004, by facsimile transmission and by mailing a copy of the same by first-class mail, postage prepaid, in an envelope addressed as follows:

Stella B. House, Esq.  
STELLA B. HOUSE, ATTORNEY-AT-LAW, P.S.C.  
Post Office Box 422  
Manchester, Kentucky 40962-0422

Jan. 28, 2004  
Date

  
\_\_\_\_\_  
Alfred J. Mangels  
Trial Attorney for Plaintiffs

cc: [stella@clayco.net](mailto:stella@clayco.net)  
[dlott\\_chambers@ohsd.uscourts.gov](mailto:dlott_chambers@ohsd.uscourts.gov)  
[alyson\\_stang@ohsd.uscourts.gov](mailto:alyson_stang@ohsd.uscourts.gov)